

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Donald Daniels,

Complainant

against

Docket #FIC 2020-0175

Chief, Police Department,  
Town of East Hartford;  
Police Department, Town of  
East Hartford; and Town of  
East Hartford,

Respondents

April 27, 2022

The above-captioned matter was heard as a contested case on May 6, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.<sup>1</sup> The complainant is incarcerated at a facility of the Connecticut Department of Correction.

On November 1, 2021, the complainant submitted, without objection, one after-filed exhibit, which has been marked as: Complainant's Exhibit C (after-filed): Complainant's "Narrowed Down Request", dated October 22, 2021.

On September 10, 2021, and December 9, 2021, pursuant to an order of the hearing officer, the respondents submitted, without objection, two after-filed exhibits, which have been marked as: Respondents' Exhibit 1A (after-filed): Affidavit of Det. Daniel Ortiz, East Hartford Police Department, dated September 10, 2021; and Respondents' Exhibit 1B (after-filed): Affidavit of Det. Daniel Ortiz, East Hartford Police Department, dated December 3, 2021 (with attachment). In addition, on October 8, 2021, the respondents submitted, without objection, an after-filed exhibit, which has been marked as: Respondents' Exhibit 2 (after-filed): Email from Office of Victim Services to the Respondents, dated March 26, 2021, and Court-Based Victim Services Advocate Contact List.<sup>2</sup>

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<sup>1</sup> On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

<sup>2</sup> The Commission notes that, at the hearing, the complainant initially objected to the submission of the March 26, 2021 email, as an after-filed exhibit. After the hearing, the complainant was given an opportunity to respond to the submission of the March 26, 2021 letter, and contact list. The Commission has not received any response to such submissions.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. It is found that by undated letter, the complainant made a request to the respondents for the “[r]esults from [the] forensic analysis performed by Detective Daniel Ortiz [on the victim’s cellphone] in case/incident #520170014788 [pertaining to Donald A Daniels] – only full printed version of online history.”

3. It is found that by letter dated March 17, 2020, the respondents informed the complainant that they did not have the victim’s permission to release the records described in paragraph 2, above.

4. By letter of complaint received and filed April 7, 2020,<sup>3</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the records described in paragraph 2, above.

5. At the time of the request, §1-200(5), G.S., provided:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.<sup>4</sup>

6. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right. . . (3) receive a copy of such records in accordance with section 1-212.

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<sup>3</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

<sup>4</sup> The Commission notes that section 1-200(5), G.S., was subsequently amended to include the term “videotaped”. See June Sp. Sess. Public Act 21-2, §147.

7. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is found that the records requested by the complainant are public records in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. At the hearing, the complainant testified that the only records at issue were records describing the number of online Google searches conducted by the victim pertaining to the complainant, and the frequency of online searches conducted by the victim on the website CityVibe.com. By letter dated October 22, 2021, the complainant clarified the specific dates for which he sought information, and described the records at issue as:

[1] Any search info Google and online history pertaining to Donald Daniels, Donnie Daniels or any derivative thereof on June 13, 2017; [and]

[2] Between January 2017 and May 2017, the frequency of how many post[s] were made on CityVibe.com.<sup>5</sup>

10. It is found, therefore, that the only records at issue in this appeal are those described in paragraph 9, above.

11. At the hearing, the respondents contended that the complaint should be dismissed for lack of subject matter jurisdiction because the undated records request and the complaint filed with the Commission were made pursuant to the federal Freedom of Information Act,<sup>6</sup> and not the state FOI Act.

12. Our Supreme Court has made clear that: “[A]s a practical matter, the FOIA is used repeatedly by members of the public who are unschooled in technical, legalistic language distinctions. It would be unreasonable to deny a member of the public access to the FOIA simply because of arguable imperfections in the form in which a request for public records is couched.” Perkins v. Freedom of Information Commission, 228 Conn. 158, 167 (1993). The Supreme Court, in disagreeing with the trial court in Perkins, also said: “[T]he trial court's contrary conclusion relied on distinctions that are overly formal and legalistic in light of the public policy expressed by the FOIA. The overarching legislative policy of the FOIA is one that favors ‘the open conduct of government and free public access to government records.’... As we have repeatedly noted, ‘[o]ur construction of the FOIA must be guided by the policy favoring disclosure....’” Perkins at 166-167 (citations omitted). In this case, it would be unreasonable to

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<sup>5</sup> By letter dated January 17, 2022, the complainant submitted a request to the hearing officer to amend his “narrowed down request”. Such request is hereby denied. The Commission notes that the complainant is not precluded from making a new records request to the respondents.

<sup>6</sup> The Commission notes that it does not have jurisdiction to enforce or make determinations regarding the federal Freedom of Information Act.

deny the complainant access to the requested records simply because he did not couch his request and complaint under the state FOI Act. Accordingly, the complainant's references to the federal Freedom of Information Act in his records request and complaint did not deprive the Commission of subject matter jurisdiction.

13. With respect to the records at issue, as described in paragraph 9, above, it is found that Detective Daniel Ortiz with the East Hartford Police Department, performed a forensic extraction of the contents of the victim's cellphone in July 2017, for purposes of the prosecution of the criminal charges brought against the complainant. It is also found that after the hearing in this matter, pursuant to an order of the hearing officer, Detective Ortiz conducted a search for the records at issue.

14. Based on Detective Ortiz's affidavit, dated December 3, 2021, it is found that he conducted a search for records responsive to the request, described in paragraph 9, above, and located six (6) internet searches made on June 13, 14 and 17, 2017, for the complainant's name or variants of his name. It is also found that no records were located regarding searches made for 'CityVibe.com' or any variant of that term from the cellphone at any time. It is found that a copy of Detective Ortiz's affidavit and the search results were provided to the complainant. The respondents did not claim that such search results were exempt from disclosure.

15. By letter dated December 10, 2021, the complainant contended that the respondents had not provided all online history search results responsive to his request described in paragraph 9, above. He contended that the search results described in paragraph 14, above, should have included certain messages sent by the victim to the complainant via social media messaging ("messages").<sup>7</sup>

16. However, based on the credible evidence offered by the respondents, it is found that they provided the complainant with all records responsive to his request described in paragraph 9, above, that they maintain. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S.

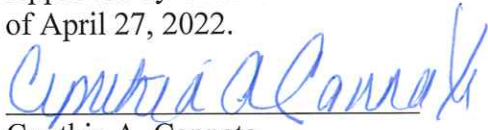
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.

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<sup>7</sup> In his letter dated December 10, 2021, the complainant also requested an in camera inspection of a "cellphone extraction log and documents". However, because the respondents have not claimed that the responsive records, described in paragraph 14, above, were exempt from disclosure, such request is hereby denied. In addition, the hearing officer's order to submit records for in camera inspection, dated October 20, 2021, is hereby withdrawn.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 27, 2022.



Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**DONALD DANIELS, #366208**, Garner Correctional Institution, 50 Nunnawauk Road, Newtown, CT 06470

**CHIEF, POLICE DEPARTMENT, TOWN OF EAST HARTFORD; POLICE DEPARTMENT, TOWN OF EAST HARTFORD; AND TOWN OF EAST HARTFORD**, c/o Attorney Michael P. Carey, Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C., 2 Union Plaza, Suite 200, New London, CT 06320 and Attorney Scott R. Chadwick, East Hartford Corporation Counsel, Town Hall, 740 Main Street, East Hartford, CT 06108



Cynthia A. Cannata  
Acting Clerk of the Commission